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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/617,455
Filing Date: July 17, 2000
Appellant(s): KRAFT ET AL.

Samuel A. Kassatly
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/8/2005 appealing from the Office action mailed 9/17/2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The 35 USC 101 rejection has been withdrawn by the Examiner. Otherwise, the appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,144,944   Kurtzman, II et al.   11-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-3, 17, 18, 22, and 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Kurtzman II et al (6,144,944).

Claims 1, 17, and 22: Kurtzman discloses a system, method and program for adapting an advertisement based on the content of a page, comprising:

a. analyzing the page content (col 4, lines50-57);

b. determining the desirability of the advertisement with the page (col 4, lines 32-34); and

c. displaying at least a portion of the desirable advertisement (col 5, lines

44-50).

Claims 2, 3, 18, and 23: Kurtzman discloses a system, method, and program for adapting an advertisement based on the content of a page as in Claims 1, 17, and 22 above, and further discloses not displaying inappropriate advertisements (col 23, lines 48-49) and displaying a first portion of the advertisement pending retrieval of a second portion of the advertisement (col 7, lines 32-39).

Claims 4-16, 19-21, and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurtzman II et al (6,144,944).

Claims 4-7, 19, and 24: Kurtzman discloses a system, method, and program for adapting an advertisement based on the content of a page as in Claims 3, 18, and 23 above, and further discloses displaying static or dynamic portions of an advertisement, multimedia file, executable code or hypedink (col 2, lines 14-17 and 53-58). However, Kurtzman does not explicitly disclose that the first portion of the advertisement is a static portion which includes an advertiser's logo. Official Notice is taken that it is old and well known within the marketing arts to disclose static symbols or text (such as "Downloading") to a user while a file is being downloaded through a network. It is also well known for a company or advertiser to display its logo, such as has been done by network television stations displaying their call sign and logo during periods of nonreception or outages. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to display a static message, such as a logo, to the user while the system was waiting for the rest of the advertisement (such as Kurtzman's video advertisement) to finish downloading. One would have been motivated to display such a static logo while waiting for the rest of the advertisement to download in order to prevent the user being presented with a "blank" screen during the wait time.

Claims 8, 9, 20, and 25: Kurtzman discloses a system, method, and program for adapting an advertisement based on the content of a page as in Claims 7, 19, and 24 above, and further discloses an ad server with an address (col 6, lines 22-36) and selecting a category for the advertisement based on the content of the page (col 4, lines 50-57).

Claims 10, 11, 21, and 26: Kurtzman discloses a system, method, and program for adapting an advertisement based on the content of a page as in Claims 9, 20 and 25 above, and

further discloses sending the selected category, keyword, and ad server address to the router and

the selected category, session information, and keyword to the ad server (col 6, lines 10-36).

Claim 12: Kurtzman discloses a system for adapting an advertisement based on the

content of a page as in Claim 8 above, and further discloses the system including a banner

advertising manager (col 5, lines 59-64).

Claim 13: Kurtzman discloses a system for adapting an advertisement based on the

content of a page as in Claim 12 above, and further discloses an indexer which indexes the

hyperlinks (addresses) for the content of the advertiser's site (col5, lines 22-37).

Claim 14: Kurtzman discloses a system for adapting an advertisement based on the content of a

page as in Claim 13 above, and further discloses an ad repository (database) for storing one or

more of an advertisement, a multimedia file, or an executable code (col 5, lines 59-64).

Claim 15: Kurtzman discloses a system for adapting an advertisement based on the

content of a page as in Claim 9 above, and further discloses comparing the current and selected

category when selecting the advertisement (col 4, lines 50-57).

Claim 16: Kurtzman discloses a system for adapting an advertisement based on the

content of a page as in Claim 15 above, but does not explicitly disclose using a domain specific

dictionary to refine a selected category. However, Official Notice is taken that it is old and well

known is the database arts to use such dictionaries and/or thesauruses to refine search terms.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the

invention was made to use such a dictionary to refine the selected category in Kurtzman. One

would have been motivated to use a dictionary to refine the search in order to include

advertisements which use synonyms to the selected term, such as "merchant" or "vendor" when searching for a "seller".

(10) Response to Argument

7.B.(b)

Beginning on page 13 if the Appellant's Appeal Brief dated 12/8/2005, Appellant states, "In Kurtzman the comparison is based on **the user's demographic affinity**. On the other hand, Claims 1, 17, and 22 recite determining the association of **the advertisement** with the **page**. . .Applicants reiterate that Kurtzman does not based the **adaptation of the advertisement based on the content of a page**. . ."

The Examiner agrees that Kurtzman discloses placing advertisements relative to the user's demographics. However, Examiner notes that Kurtman also discloses placing advertising which is relative to the content of a web page.

Examiner notes that Kurtzman discloses a variety of affinity frameworks or relevance frameworks for placing advertising (Fig. 1, item 'Page Sponsor Engine', 'Keyword Sponsor Engine', 'Content Stream Engine', 'Demographic Engine'; Fig. 2, 'Keyword Sponsorship Targeted Ads', 'Content Stream Analysis'). Note from these Figures that Kurtzman discloses that keywords and the content stream of a page can be analyzed to determine whether an advertisement is relevant to the page.

Examiner also notes that Kurtzman further discloses placing advertising which is relative to the content of a web page:

"(15) The page sponsor engine 112 represents an affinity engine that finds

advertisements that are associated with a particular page request from the client 175. These

advertisements correspond to sponsors' ads for that specific page (col 2, lines 40-45).

(16)   The key word sponsor engine 114 corresponds to a key word sponsorship of

advertisements for key words included in the request from the client 175. The key words may be

associated with the particular page 179, or a search that is performed by the client 175, for

example (col 2, lines 45- 50).

(17)   The content stream engine 116 analyzes the content of the page 179 and attempts to

match a corresponding advertisement reflecting the interests of the user. One embodiment of

such a content stream engine 116 is described in United States patent application entitled,

"Content Stream Analysis," filed Apr. 24, 1997, having Ser. No. 08/847,778, and inventor

Stephen J. Kurtzman, II, incorporated herein by reference (col 2, lines 50-57).

(32)   At block 220, the web server 160, using the CGI 162, makes a request of the ad

server 100 to provide one or more advertisements. The request for these advertisements includes

information about the user at the client 175. Such information may include a universal identity

for that user, a TCP/IP address, demographic and/or sociographic information, previous

advertisements displayed to that user, the content of the page being provided to the user, and the

like. The ad server 100 may alternatively store much of this information for the web server 160.

What is important is that some identifying information is provided to the ad server 100 that can

be used by the various affinity engines in selecting advertisements for the user. If no such

information is provided, the ad server 100 will use engines that do not require such information

in ad selection (col 6, lines 21-36).

(15)   In various embodiments of the invention, an advertisement server provides selected

advertisements in response to a request from a web page server. The request includes information that will allow the advertisement server to select an appropriate advertisement. The advertisement server includes a control program for controlling the selection of the advertisements. The control program communicates with one or more affinity engines. Each affinity engine determines an affinity (degree of relevance or indicator of matching) given advertisements have for the information in the request. The engines use different request information such as demographic information, page sponsor information, keyword sponsor information, etc (col 2, lines 25-38).

(225) At each generation block in the flow chart, a list of potential ads is determined based on the user-profile information passed to the engine. For example, at block 410, block 420, and block 430, page sponsor advertisements, key word sponsor advertisements, and content stream and/or user interest advertisements, respectively, are found. The block 410 passes its generated list through the corresponding weighting block 412. The weighting block 412 adjusts the weights of advertisements found by the block 410. Similar blocks 422 and 432 exist. Note that in one embodiment, block 420 will not be executed if a sufficient number of advertisements are found in block 410 (after the weights are applied)" (col 23, lines 5-17).

Notice from the above citations that Kurtzman discloses a variety of factors that can be analyzed to determine the relevance of advertising or which advertising to present. Also, note that Kurtzman discloses that keywords, content stream analysis, the page sponsor, or the contents of a page can all be analyzed to determine the advertising relevance or which advertising to send.

7.C.(b)

On page 18 of the Appellant's Appeal Brief dated 12/8/2005, Appellant makes argument against the Official Notice taken in the Office Action dated 9/17/2004.

Examiner notes that the Arguments presented by the Appellant concern claims 4-7, 19, and 24. Examiner further notes that Official Notice was taken to demonstrate that it is obvious to present a part or portion of advertising content to a user while the user is waiting for the other parts or portions of the advertisement to be presented.

In support of the Official Notice taken on 9/17/2004, Examiner now to the Landsman (6,314,451) reference. Examiner notes that the Landsman reference filing date (1/26/1999) predates the Appellant's filing date (7/17/2000). Examiner further notes that in the 'Background of the Disclosure' section that Landsman discloses the following as being obvious, old and well known.

Landsman discloses banner advertisements with static and dynamic content and also hyperlinks and different parts or portions of an advertisement including different content, graphics, product names, service names, hyperlinks:

"(11) Currently, a predominant format, referred to as a "banner", for a web advertisement takes the form of a rectangular graphical display situated, typically at a fixed location, in a rendered web page. A banner, which can be static or animated, can be situated anywhere within a rendered web page but most often is situated at a top or bottom, or along a vertical edge of that page. A banner, depending on its size, can extend across an entire page width or length, and usually contains, in a graphical eye-catching form, a name of a product or service being advertised. Increasingly, a banner for a given product or service implements a

hotlink to enable a consumer to "click-through" the banner (i.e., generate a mouse click on the

banner) in order to transition, via his browser, to a web site maintained by a corresponding

advertiser and, from that site, fetch a web page to provide additional information regarding

that product or service. Hence, the consumer could easily obtain more information by a click-

through; while an advertiser, monitoring counts of such click-throughs that occur in a given

period of time, could gain feedback on the effectiveness of the corresponding banner (col 3,

lines 23-35).

Landsman further discloses that banner advertisements can be large or take a large time

to download and that this is a problem with banner advertisements:

"(13)   In implementing a banner, whether static or even animated, its HTML coding

generally involved downloading an appropriate file, for that banner, to a client browser. The

file may be stored on the same server that stores the HTML file for the page, or accessed from a

remote server. The file may contain a graphic itself, such as in a GIF (graphic interchange

format) file, or a Java applet which, once interpreted and executed by the browser, generates

and renders a desired animated graphic. This file, whether it be a graphic or applet, requires

time to download and must be downloaded and assembled by the browser on the page prior to

that page being fully rendered. The download time for that file, particularly as it increases in

size, clearly, a priori, lengthens a time interval during which that page would completely

download, thereby extending the time to fully render the page, including the banner, after a user

transitioned to that page. Channel bandwidth to a client computer (e.g., personal computer--

PC), such as that provided through a modem connection, is often rather limited. Consequently,

if the file size for the banner were relatively large--as would certainly be the case for relatively

"rich" content, e.g., audio or video content, the delay in downloading such a file over such a

limited bandwidth connection could be excessive, and consequently highly frustrating to the

user. Hence, a user would likely wait a considerable amount of time before all the page

components for multimedia content are fully downloaded to permit that page to be rendered.

Such delay, if encountered during a page transition, can be rather frustrating to a user,

even to the point at which the user, just to end his(her) waiting, will prematurely terminate the

download and transition to another page. Therefore, in an effort to preserve an appropriate

"editorial experience" for a user, content suppliers sharply limit the file size, of such banners to

be rendered on their pages, in order to minimize page download and hence latency times (col 3,

lines 53-col 4, line 21).

(14) Unfortunately, such restricted file sizes effectively limit the richness of the content

of a banner to a rather simplistic advertisement--even with animation. Thus, banners often

failed, as advertisers soon recognized by relatively low click-through counts, to attract sufficient

viewer attention to justify their use and expense" (col 4, lines 21-27).

Landsman further discloses real time streaming of banner advertising content to the user

such that the portions or parts of a banner advertisement are presented to a user as those

portions or parts become available for presentation:

"(25) To surmount the latency problems inherent in such banner-like advertisements,

various proprietary media formats have appeared in the art. These formats employ increasingly

sophisticated data compression, sometimes in conjunction with video and/or audio streaming.

Rather than waiting for a media file to fully download prior to its being rendered, streaming

permits content in a "streamed" media file to be presented in real-time to the user as that

content arrives at his(her) client browser (col 7, lines 28-37).

(27) In spite of these drawbacks, particularly with respect to interstitial advertisements

and push technology, and apparently for lack of a better alternative, most web advertising

currently in use employs real-time streaming of graphic files with their content being rendered

by the browser (col 7, lines 48-54).

(29) In particular and as conventionally employed, delivery of a web advertisement, such

as, e.g., a streamed ad, is logged as a "user impression" at a web server at an instant an

advertising file(s), e.g., a streamed file, is served, rather than after the browser has completely

rendered the advertisement to the user. Unfortunately, serving these ad files does not guarantee

that these files will be ultimately and completely rendered by a client browser to a user" (col 7,

line 65-col 8, line 6).

Note that these citations from Landsman come from the 'Background of the Disclosure'

section of Landsman. Also, notice that Landsman discloses that it is obvious, old and well

known that banner advertisements can be large, that banner advertisements can take a long time

to load or present to the user, and that the content or different portions/parts of a banner

advertisement can be streamed or presented as each portion/part of content becomes available

for presentation.

Hence, the Official Notice taken in the Office Action dated 9/17/2004 is supported as

being obvious, old and well known to ones skilled in the art at the time of the Appellant's

invention.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related

Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Arthur Duran

Primary Examiner

2/21/2006

Conferees:

Eric Stamber

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